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May 6, 2019

By ECFS

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: ***In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1, WC Docket No. 18-60, Transmittal No. 40 (Apr. 29, 2019 Revised Tariff Filing)***

Dear Ms. Dortch:

AT&T Services, Inc. ("AT&T") submits for filing the **Public Version** of its Petition to Reject or to Suspend and Investigate the proposed tariff in Transmittal No. 40 filed on April 29, 2019 by Iowa Network Services, Inc. d/b/a Aureon Network Services ("Aureon"). Consistent with the Commission's rules and the March 26, 2018 Protective Order entered by the Commission Staff, AT&T has redacted all "Confidential Information" from the **Public Version**, which it is filing by ECFS.

AT&T is also filing by hand with the Secretary's office four hard copies of the **Confidential Version** of this submission. In addition, copies of all versions of the submission are being served electronically and by facsimile on Aureon's counsel. Two copies are also being provided to Joseph Price at the Wireline Competition Bureau.

Please contact me if you have any questions regarding this matter.

/s/ James F. Bendoragel, Jr. _____
James F. Bendoragel, Jr.

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Iowa Network Access Division
Tariff F.C.C. No. 1**

WC Docket No. 18-60

**Transmittal No. 40
April 29, 2019 Access Charge
Tariff Filings**

**PETITION OF AT&T SERVICES, INC. TO REJECT OR TO SUSPEND AND
INVESTIGATE IOWA NETWORK SERVICES, INC. TARIFF FILING**

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Dated: May 6, 2019

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Iowa Network Access Division
Tariff F.C.C. No. 1**

WC Docket No. 18-60

**Transmittal No. 40
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Tariff Filings**

**PETITION OF AT&T SERVICES, INC. TO REJECT, OR TO SUSPEND AND
INVESTIGATE, IOWA NETWORK SERVICES, INC. TARIFF FILING**

Pursuant to Section 204(a)(1) of the Communications Act (“Act”), 47 U.S.C. § 204(a)(1), and Section 1.773 of the Commission’s rules, 47 C.F.R. § 1.773, AT&T Services, Inc., on behalf of its affiliates (“AT&T”), petitions the Commission to reject, or to suspend and investigate, the above-captioned revised tariff filed by Iowa Network Services, Inc. d/b/a Aureon Network Services (“Aureon”) on April 29, 2019, under Transmittal No. 40 (“Proposed Tariff”).¹

INTRODUCTION

In the *Second Rate Order*,² the Commission found that significant issues continued to exist with respect to the reasonableness of Aureon’s revised tariff rate for CEA service, and it directed Aureon to file a “revised” tariff, along with “revised cost support,” no later than 60 days from the

¹ A tariff is subject to rejection when it is *prima facie* unlawful, in that it demonstrably conflicts with the Communications Act or a Commission rule, regulation or order. *See, e.g., Am. Broad. Cos. v. AT&T*, 663 F.2d 133, 138 (D.C. Cir. 1980); *MCI Telecomms Corp. v. AT&T*, 94 F.C.C.2d 332, 340-41 (1983). Suspension and investigation are appropriate where a tariff raises substantial issues of lawfulness. *See AT&T (Transmittal No. 148)*, 101 F.C.C.2d 144 (1985); *ITT (Transmittal No. 2191)*, 73 F.C.C.2d 709, 716, n.5 (1979) (citing *AT&T (Wide Area Telecomms. Serv.)*, 46 F.C.C.2d 81, 86 (1974)).

² *See* Memorandum Opinion and Order, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, 2019 WL 1010709, ¶ 36 (Feb. 28, 2019) (“*Second Rate Order*”).

release date of its order. *Second Rate Order*, ¶¶ 1, 36; *see also Liability Order*, ¶ 35 (same);³ *First Rate Order*, ¶ 122 (same).⁴ Rather than simply comply with that directive and correct the problems with its prior rate filing, Aureon has instead submitted an entirely new tariff filing based on a new 2019 test year, along with what purports to be new 2019 financial data and a new 2019 traffic forecast. The reason that Aureon has adopted this approach is obvious – if it had simply corrected the problems and “revised” its prior rate filing, its rate for CEA service would have decreased from \$0.00296/min. to [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] i.e., the level AT&T previously demonstrated was appropriate in its Opposition to Aureon’s Second Direct Case. *See AT&T Opp.* at 1-2.⁵ By making a new tariff filing, however, Aureon seeks to avoid that result and actually proposes to raise its CEA rate to \$0.00363/min., thereby more than doubling the rate that Aureon could have legitimately tariffed as of March 2018.

For the reasons set forth herein, the Commission should, at a minimum, suspend and investigate Aureon’s new tariff filing. However, outright rejection of the new tariff would also be appropriate in light of Aureon’s decisions to raise its rate and ignore the Commission’s directives in the *Second Rate Order*. As explained in more detail below, no justification exists for Aureon’s submission of an entirely new tariff filing. In the *Second Rate Order*, the Commission directed Aureon to address a number of specific issues and to provide additional documentation. *See id.*

³ *See* Memorandum Opinion and Order, *AT&T Corp. v. Iowa Network Services, Inc. d/b/a Aureon Network Services*, 2017 WL 5237210, ¶ 35 (Nov. 8, 2017) (“*Liability Order*”).

⁴ Memorandum Opinion and Order, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, 2018 WL 3641034, ¶ 122 (July 31, 2018) (“*First Rate Order*”).

⁵ *See* AT&T Services, Inc.’s Opposition to Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, WC Docket No. 18-60, Transmittal No. 38, at 1-2 (Dec. 6, 2018) (“AT&T Opp.”).

¶¶ 12-13, 18-19, 31, 35-36. It said nothing about submitting a new tariff filing, nor did it invite Aureon to re-open issues that already had been resolved, such as Aureon’s traffic forecast. Further, Aureon’s new tariff filing, if applied both to past periods (March 1, 2018 to May 13, 2019) and to the future (May 14, 2019 to June 30, 2020), would necessarily result in an excessive return because the actual volume of traffic transported during the past periods greatly exceeds the traffic volumes included in Aureon’s new test year projection. Indeed, for 2018, it is more than 50% higher. Additionally, Aureon should not be permitted to benefit from its prior and repeated failure to properly calculate its rates. If Aureon’s rate had been properly calculated [REDACTED]

[REDACTED]

[REDACTED] basic economic principles suggest that little or no traffic would have left Aureon’s CEA service—indeed, it is possible that Aureon’s traffic would increase [REDACTED]

[REDACTED] Consequently, Aureon has no one to blame other than itself for the situation that it now confronts.

Even if the Commission were not to reject the filing, the Commission should suspend and investigate Aureon’s new rate filing. Due to the size of Aureon’s submission, AT&T has not had a full opportunity to review and analyze the reasonableness of Aureon’s revised tariff rate or the completeness of the supporting documentation. Nevertheless, it is evident from AT&T’s initial review that: (1) Aureon’s fair market value analysis is deficient in several respects; (2) serious questions persist with regard to the manner in which Aureon has calculated its cost of service rate; (3) Aureon’s dramatic increase in central office switching investment does not satisfy the Commission’s “used and useful” standard (or its Part 32 accounting rules); and (4) Aureon’s new traffic forecast is unsubstantiated.

As part of its Proposed Tariff, Aureon has produced additional data regarding its third-party sales for DS-3 transport service. However, there are significant discrepancies between that data and the third-party lease data that Aureon previously produced, and Aureon has not adequately explained the reasons for those discrepancies. Additionally, there are unexplained discrepancies between Aureon's new third-party lease data and its new DS-3 circuit inventory data. Moreover, significant issues exist with Aureon's calculations of the "fair market value" of the DS-3 services it sells to third parties. As discussed below, Aureon provides two separate calculations. While the results of those calculations are more in line with the calculations performed by AT&T and the Commission in the prior rate case (and clearly demonstrate the excessive nature of Aureon's prior CEA rates), both calculations contain errors and neither calculation is fully explained. In addition, Aureon has not addressed the many other issues AT&T previously identified with Aureon's fair market value analysis, including the serious deficiencies in Aureon's replacement cost analysis and the significant differences between the regulated services on which Aureon continues to rely and the transport capacity that the Access Division leases on Aureon's fiber network.

Significant problems also continue to exist with Aureon's cost of service rate calculation and its fully distributed cost methodology. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In addition,

⁶ See Declaration of Brian F. Pitkin in Support of AT&T Services, Inc.'s Opposition to Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, ¶ 31 (Dec. 6, 2018) ("Pitkin Decl.").

Aureon has still not adequately explained the significant changes in its circuit inventories between 2016 and 2018 (*see id.* ¶ 23), and its new circuit inventory raises additional questions regarding the accuracy and reliability of its DS-3 and DS-1 circuit counts. Also, Aureon has not justified its inclusion of an additional \$4.4 million of central office switching investment in the revenue requirement underlying its current CEA rates, and numerous questions exist as to Aureon's new traffic forecast.

In sum, Aureon's new tariff filing continues to raise serious questions about Aureon's CEA ratemaking practices and rates that require further exploration. Accordingly, the Commission should either reject outright or, at a minimum, suspend Aureon's revised tariff and set for investigation the issue of whether Aureon's revised rate complies with the Commission's regulations, its *Rate Order*, and is just and reasonable.

BACKGROUND

In its *Second Rate Order*, the Commission rejected Aureon's September 2018 revised tariff rate and it directed Aureon to re-file its tariff and address specific deficiencies that the Commission had identified in both the *First* and *Second Rate Order*. *Id.* ¶¶ 12-13, 18-19, 31, 35-36. Those deficiencies principally related to the Filed Lease Expense that Aureon's non-regulated Network Division has charged its Access Division for use of Aureon's fiber network. *Id.* In its Second Direct Case, Aureon again failed to establish that it is paying its affiliate Network Division less than the lower of: (1) the fair market value of the leased facilities; and (2) the fully distributed costs of those leased facilities, as required by the Commission's affiliate transaction rules. *Id.* ¶ 12. While the Commission declined to address whether Aureon's cost support justified the increase in its central office switching investment, it directed Aureon to address that issue, along with any other issues raised by the record in Docket No. 18-60. *Id.* ¶ 13.

The Commission rejected Aureon’s fair market value analysis because Aureon failed to take into account the rates at which its Network Division sells DS-3 circuits to third parties on a nonregulated basis, which was an issue the Commission raised in both the *First Rate Order* and the *Second Designation Order*.⁷ *Id.* ¶ 14. The Commission recognized that Aureon’s nonregulated DS-3 transport service “may not be exactly the same service” as CEA service, but it found that Aureon had failed to justify the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] As a result, the Commission ordered Aureon to provide:

- a comprehensive and well-defined database of third-party sales for DS-3 transport service (including the customer, detailed service description including identifying the rate elements that comprise the service, service dates, number of circuits, mileage, and per-circuit rate); and
- an explanation regarding how this information should inform the calculation of fair market value in evaluating the Filed Lease Expense.

Id. ¶ 18. It also rejected Aureon’s request for a waiver of the requirement to make a fair market value showing. *Id.* ¶ 19.

With respect to the fully distributed cost issue, the Commission identified several deficiencies in Aureon’s submission. Most notably, the Commission concluded that Aureon’s method of allocating C&WF costs failed to accurately reflect how those costs were incurred. *Id.*

¶ 34. [REDACTED]

⁷ See Order Designating Issues for Investigation, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38 (Nov. 9, 2018) (“*Second Designation Order*”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Commission also concluded that Aureon’s proposed method of valuing its nonregulated Ethernet rings was overly simplistic. *Second Rate Order*, ¶ 35.

To address these issues, the Commission ordered Aureon to provide the following:

- a more satisfactory explanation for the reported difference in DS-1 circuits between its 2015 and 2018 circuit inventories (*id.* ¶ 31);
- a full cost support that includes, but is not limited to, the specific explanations and analyses described in the *Second Rate Order* (*id.* ¶ 36); and
- a reasonable methodology to convert Aureon’s inventory of Ethernet circuits to physical rings so that a proper number of ring-miles can be allocated to its Ethernet circuits (and, thus, to nonregulated activity) (*id.* ¶ 35).

The Commission further directed Aureon to address the “other issues and questions raised in the [*First Rate Order*] and in the record but not explicitly addressed in [the *Second Rate Order*]” (*id.*

¶ 35), which include:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁸ See AT&T Ex Parte Presentation, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, at 7 (Feb. 5, 2019) (“AT&T Ex Parte”).

⁹ See Supplemental Declaration of Brian F. Pitkin, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, ¶¶ 13-18 (Feb. 14, 2019) (“Pitkin Supp. Decl.”).

- a justification for its current CEA DS-1 circuit count, particularly whether it is “used and useful” (*First Rate Order*, ¶ 14; AT&T Ex Parte, at 9); and
- documentation for the source of its Filed Lease Expense (*id.*, Ex. 46, at 1).

Finally, with respect to the \$4.4 million increase in central office switching investment, the Commission directed Aureon to address that issue as part of its cost support and explanatory material. *Second Rate Order*, ¶ 13. As to that issue, the record shows that Aureon failed to provide the following: [REDACTED]

- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]
- I [REDACTED]

As explained below, serious questions continue to exist as to whether Aureon’s April 29, 2019 Proposed Tariff complies with the Commission’s directives, and those questions must be investigated further.

ARGUMENT

I. AUREON HAS FAILED TO SUBMIT A *REVISED* TARIFF FILING AND INSTEAD HAS SUBMITTED A NEW TARIFF FILING, BASED ON A NEW TEST YEAR, THAT IS INAPPLICABLE TO THE PRIOR PERIODS THAT ARE INCLUDED IN THIS PROCEEDING.

As noted above, the Commission did not direct Aureon to make an entirely new tariff filing, nor has Aureon offered any legal justification for radically altering its tariff filing in the middle of

a rate proceeding. Rather, in an effort to avoid setting its CEA rate at a just and reasonable level (and the level at which it should have been tariffed as of March, 2018), Aureon has manipulated its rate filings in an attempt to justify a higher rate than the rate the Commission recently rejected in the *Second Rate Order*. Aureon's efforts to counteract the required rate reductions started with its September 2018 tariff filing, in which it included an additional \$4.4 million in central office switching equipment, arguing that the test year for that investment should be extended to and include the full period that the proposed rate would be in effect. In its most recent filing, Aureon has abandoned that position and based its new proposed rate on what purports to be a new test year that not only includes the new \$4.4 million in additional switching investment, but also includes a new 2019 traffic forecast. There are multiple problems with Aureon's new approach, which require either outright rejection or, at a minimum, an investigation.

First, Aureon's new 2019 test year improperly includes inconsistent data sets from different time periods. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The

Commission's financial regulations make clear that the financial data included in a test year must relate to the 12-month period immediately before the start of the test year. *See* 47 C.F.R. § 61.38(b)(1) ("For a tariff change the issuing carrier must submit the following, including complete explanations of the bases for the estimates ... (i) A cost of service study for all elements *for the most recent 12 month period.*") (emphasis added). Aureon's new tariff filing is in clear violation of that regulation.

Second, Aureon’s failure to construct its test year using data gathered on a consistent basis results in a mismatch between its cost data and its projected demand for CEA service, which is also problematic. The majority of the costs in Aureon’s rate filing are based on 2017 financial data, but the demand (which determines the per-minute rate for service) is based on a 2019 projection of 2018 traffic data. Worse yet, Aureon continues to include the additional \$4.4 million in switching investment, which has yet to be purchased and is not scheduled to go into service until at the earliest March 2020 (a mere four months before the tariff is set to expire). Aureon has not presented any justification for the Commission’s acceptance of a rate based on this type of hodgepodge of data, nor should the Commission adopt such a rate that does not accurately reflect the costs of providing service in a single test year. Indeed, Section 61.38 generally precludes that result.

Third, Aureon’s proposal would necessarily result in Aureon continuing to earn an excessive return on its CEA rate. In its tariff filing, Aureon admits that in 2018, its interstate CEA minutes of use totaled about 2.2 billion minutes. *See* Aureon Justification, at 2.¹⁰ Yet the rate Aureon now proposes to charge would be based on a traffic forecast of 1.4 billion CEA minutes of use. *Id.* at 7. As a consequence, Aureon’s new proposed CEA rate would result in Aureon’s earning a windfall on every CEA minute of use in 2018, which, in turn, would cause it to over-earn on its rate base with respect to that traffic. Moreover, that overearning would not be offset by the rates billed in 2019 and 2020 because Aureon’s new CEA rate has been set based on a much smaller forecasted traffic volume. Accordingly, there is absolutely no justification for imposing Aureon’s new proposed rates on Aureon’s 2018 CEA traffic.

¹⁰ *See* Iowa Network Services, Inc. d/b/a Aureon Network Services, Iowa Network Access Division Tariff F.C.C. No. 1, Transmittal No. 40, Description and Justification, at 2 (Apr. 29, 2019) (“Aureon Justification”).

Fourth, there is also no justification for requiring Aureon's CEA customers in 2018 and 2019 to pay for switch investment that will not be incurred until late 2019 or early 2020. Indeed, Aureon now admits that its new switch will not be ready to go into service until at least March 2020 (Aureon Justification, at 7), which is a full two years after the tariff that is at issue in this proceeding first went into effect. As Mr. Pitkin previously demonstrated (and Aureon has not contested), the impact of Aureon's inclusion of an additional \$4.4 million in switching investment was an increase of Aureon's CEA rate by about 20% or \$0.0005/min. *See* AT&T Opp. at 15-16. In other words, Aureon is proposing that its customers pay a CEA rate that is inflated by 20% for the first 24 months of the 28 months that the rate would be in effect. No justification exists for this type of overbilling. Rather, it makes clear the fundamental reasoning underlying the Commission's Part 32 rules, which require an expense to have already been incurred before being included in a carrier's regulated accounts.

Fifth, Aureon has no one but itself to blame for the decline in traffic it is now projecting will occur with respect to its CEA service. In March 2018, Aureon filed a rate for CEA service of \$0.00576/min., which is almost four times higher than the rate that should have been filed based on Aureon's current allocation methodology. Consequently, the fact that its CEA customers have sought alternatives is not surprising; to the contrary, it is what one would expect to occur if there were competitive alternatives. As has been pointed out in other Commission proceedings, those alternatives may also be inflated in price,¹¹ but that too is a product of Aureon's failure to

¹¹ *See* AT&T Ex Parte Submission, *Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07- 135; *Connect America Fund*, WC Docket No. 10-90; *Updating the Inter-carrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, at 24, 30-32, 34 (Apr. 9, 2019).

set its rates on a just and reasonable basis.¹² In no event does it justify Aureon's current attempt to recoup its losses by increasing its rates based on a new tariff filing that contains information that post-dates the original test year. Indeed, Aureon's approach smacks of retroactive ratemaking. *See Nader v. FCC*, 520 F.2d 182, 202 (D.C. Cir. 1975) ("It is, of course, a cardinal principle of ratemaking that a utility may not set rates to recoup past losses, nor may the Commission prescribe rates on that principle.").

As a result of these serious deficiencies, the Commission should simply reject Aureon's Proposed Tariff and direct Aureon to *revise* its tariff in compliance with the *Second Rate Order*. Alternatively, the Commission should suspend and investigate Aureon's Proposed Tariff. Even if Aureon could somehow overcome all of the problems indicated above, substantial issues remain regarding Aureon's computation of its new CEA rate, as detailed below.

¹²



II. AUREON’S FAIR MARKET VALUE ANALYSIS FAILS TO ADDRESS THE CONCERNS RAISED BY THE COMMISSION IN THE *SECOND RATE ORDER*, AND THERE ARE SIGNIFICANT DISCREPANCIES IN AUREON’S THIRD-PARTY LEASE DATA.

The Commission’s affiliate transaction rules provide that “[w]hen services are purchased from or transferred from an affiliate to a carrier, the lower of fair market value and fully distributed cost establishes a ceiling, above which the transaction cannot be recorded.” 47 C.F.R. § 32.27(c)(2). Where the fair market value analysis is concerned, a carrier must either “[1] demonstrate compliance with this requirement or [2] seek a waiver.” *First Rate Order*, ¶ 62. During the prior tariff investigation, Aureon submitted a fair market value analysis in an attempt to comply with this rule. That analysis compared Aureon’s Filed Lease Expense against an “average” lease expense that would result from the regulated CEA rates of South Dakota Network (“SDN”) and Minnesota Independent Equal Access Corp. (“MIEAC”), dedicated transport rates of CenturyLink and NECA (also regulated) and a lease expense based on a replacement cost study developed for litigation purposes. Aureon also provided its own third-party lease data as part of its submission, but it argued that the data did “not have any relevance” in determining the fair market value of DS-3 Fiber Transport on its network. *See Aureon Second Direct Case*, at 33.¹³

The Commission rejected Aureon’s fair market value analysis, noting that Aureon’s DS-3 Fiber Transport service was, in fact, “similar to the CEA transport services at issue in [the] investigation.” *Second Rate Order*, ¶ 14. Notwithstanding the apparent similarities, the Commission noted that Aureon had failed to provide any information “about whether it provides service-level agreements in connection with its provision of DS3 transport service and how such

¹³ *See Direct Case of Iowa Network Access Division d/b/a Aureon Network Services, In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, at 33 (Nov. 28, 2018) (“Aureon Second Direct Case”).

agreements affect a comparison of its DS3 transport service to its CEA transport service.” *Id.* ¶

16. This was a particularly glaring omission given that [REDACTED]

[REDACTED] As the Commission noted, had sufficient information been provided, Aureon’s third-party lease rates “*might* help establish a baseline for the fair market value of its CEA transport services.” *Id.* ¶ 16 (emphasis added).

To correct these deficiencies, the Commission directed Aureon to provide a detailed database of its third-party sales for DS-3 transport, which needed to include “the customer, detailed service description including identifying the rate elements that comprise the service, service dates, number of circuits, mileage, and per-circuit rate.” *Id.* ¶ 18. The Commission also ordered Aureon to provide an explanation of how this information should inform the fair market value analysis. *Id.* However, as discussed below, Aureon’s Proposed Tariff fails to provide the information required by the *Second Rate Order*, and there are serious discrepancies between Aureon’s current third-party lease data and its prior lease data that warrant further investigation.

First, Aureon has failed to provide a “detailed service description” for each of its DS-3 circuits, so there is no way properly to compare the supposed features of Aureon’s “CEA Transport Service” (*see* Aureon Second Direct Case, at 8-9) with the features that Aureon provides to customers that purchase DS-3 Fiber Transport on a nonregulated basis. Instead, Aureon asserts—without any support or justification—that “the unregulated DS-3 circuits do not all have the robust features that are typically provided with CEA service,” and it uses this unsupported assertion to then conclude that the fair market value of its CEA Transport Service would be higher. Aureon

Justification, at 4.¹⁴ This is hardly the kind of detailed explanation required by the Commission. *See Second Rate Order*, ¶ 18.¹⁵ Aureon also wrongly suggests that the *Second Rate Order* establishes its third-party lease rates as a “baseline.” Aureon Justification, at 3-4. As noted above, the Commission indicated that such data “might help establish” a baseline, but it was incumbent upon Aureon to justify any differential. Aureon has failed to provide any such justification, and as AT&T indicated in its Opposition, the wholesale nature of Aureon’s CEA Transport Service would suggest that its Filed Lease Expense should be *lower* than its third-party lease rates. *See AT&T Opp.* at 60-61.

Second, Aureon has failed to “identify[] the rate elements that comprise the service[s]” it provides on a nonregulated basis. *Second Rate Order*, ¶ 18. [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
[REDACTED] [REDACTED]

¹⁴ Despite Aureon’s claim that its “CEA Transport Service” offers more robust features, the information Aureon provides on its own website suggests that its nonregulated services may, in fact, have access to greater features and an even more extensive network. *Compare* Aureon Second Direct Case, at 9 (indicating that Aureon’s nonregulated services “do not provide access to the entire [2,700 mile] CEA network,” and that they only offer “unprotected point-to-point service” with no redundant features), *with* AT&T Ex Parte, Ex. 48 (information from Aureon’s website indicating that “As an Internet Service Provider and a Business Internet Provider, Aureon offers high-speed, reliable, and *redundant internet solutions and data services*. With more than 5,500 miles, the Aureon Fiber Optic Network delivers unmatched reliability throughout Iowa.” (emphasis added)).

¹⁵ [REDACTED]

¹⁶ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Third, Aureon calculates a fair market value figure on a per-circuit basis (“Approach A”) and a per-mile basis (“Approach B”) using its lease data, but those calculations are critically flawed: [REDACTED]

[REDACTED]

[REDACTED] Further, as explained below, there are other potential problems with these two calculations.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

17 [REDACTED]

18 [REDACTED]

17

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] As a result, *both* Approach A and Approach B suggest that Aureon’s Filed Lease Expense is actually priced higher than Aureon’s nonregulated DS-3 services.²¹

Fourth, Aureon has not explained the significant differences that exist between the regulated services on which Aureon relies (as part of its “average” lease expense calculation) and the leased capacity at issue here. As AT&T previously pointed out, each of the services on which Aureon relies is a retail service marketed to end users, not a wholesale service provided to a carrier for use in providing a retail service. *See* AT&T Opp. at 22. Further, none of the regulated services cited by Aureon is directly comparable to the DS-3 capacity leased by the Access Division for use in the provision of CEA service. In fact, the SDN service is not even a transport service (*see id.*), and the Commission has already determined that NECA’s rates are not useful in evaluating the reasonableness of Aureon’s CEA rates. *See First Rate Order*, ¶¶ 31-34. Moreover, Aureon

20 [REDACTED]

21 [REDACTED]

continues to indicate that SDN's rate is \$0.005122/min., which Aureon says has "been updated to reflect the lowest rate" based on "the lowest per MOU element."²² However, as of April 5, 2019, and in accordance with the Commission's directive, SDN set a rate of \$0.002288/min., which is significantly lower than Aureon's new tariff rate.²³ Aureon has failed to address any of these problems.

Fifth, Aureon's third-party lease data appears to confirm that Aureon furtively concealed the extent of the third-party leases on its fiber network, and the significant reduction in its current third-party lease inventory from its prior version suggests it may be doing so again. AT&T indicated in its Opposition that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

²² [REDACTED]

²³ See Refund Plan of South Dakota Network, LCC, *In the Matter of July 1, 2018 Annual Access Charge Tariff Filings, South Dakota Network, LLC Tariff F.C.C. No. 1*, WC Docket No. 18-100, Transmittal No. 13, at 1 (Apr. 17, 2019).

²⁴ See Rebuttal of Iowa Network Access Division d/b/a Aureon Network Services, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 38, at 18, 20 (Dec. 12, 2018) ("Aureon Second Rebuttal").

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sixth, there are a number of serious, unexplained discrepancies in Aureon's third-party lease data. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 [REDACTED]

[REDACTED]

26 [REDACTED]

[REDACTED]

27 [REDACTED]

[REDACTED]

28 [REDACTED]

[REDACTED]

29 [REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

30 [REDACTED]

31 Aureon Justification, at 4. It is also inconceivable—or incredibly irresponsible—that Aureon did not previously have an inventory of its leased circuits with the kind of information the Commission requested.

32 [REDACTED]

33 [REDACTED]

34 [REDACTED]

[REDACTED]

[REDACTED]

Finally, Aureon continues to rely on its prior replacement cost analysis, but it has not addressed the serious deficiencies identified in AT&T's prior filings. As AT&T previously pointed out, replacement cost is an inferior measure of market value, particularly when there is market data such as Aureon's third party lease data. AT&T Ex Parte, Ex. 49, at 1-2. In addition, serious methodological and technical problems exist with Aureon's study. *Id.* at 3-6. Aureon's replacement cost study also is not based on forward-looking costs, and issues relating to potential economies of scale and scope continue to exist. *Id.* Further, questions remain as to the adequacy of the cost support underlying Aureon's replacement cost study. *Id.*

III. SIGNIFICANT ISSUES REMAIN WITH RESPECT TO AUREON'S CALCULATION OF ITS COST OF SERVICE RATE AND ITS FULLY DISTRIBUTED COST STUDY

The Commission should also reject or suspend Aureon's revised tariff because it does not comply with the Commission's affiliate transaction rules and because Aureon has not fully responded to the specific directives set forth in the *Second Rate Order* to provide certain information in support of its revised cost of service rate. In addition, Aureon has not adequately explained the differences that exist between the information on which Aureon now relies and the types of information that Aureon has previously submitted in support of its tariffed CEA rates. Further, given the volume and complexity of the data submitted by Aureon in support of its Proposed Tariff, both the Commission Staff and the parties need more time to fully analyze and assess that information.

A. The Commission Previously Identified Serious Issues With Aureon’s Fully Distributed Cost Study

In its September 24, 2018 tariff filing, Aureon allocated its C&WF costs based on its analysis of DS-3 and DS-1 circuit usage. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In the *Second Rate Order*, the Commission rejected Aureon’s approach to allocating C&WF costs, concluding that “the methodology [Aureon] uses is substantially flawed” because it “improperly weights the allocation value of rings by the number of DS3s carried on the ring and also fails to properly weight the allocation value of rings carrying Ethernet circuits.” *Second Rate Order*, ¶ 32. Stated otherwise, “the [C&WF] allocation methodology used by Aureon fails to accurately reflect how costs are actually incurred,” and “Aureon’s proposed method of valuing unregulated Ethernet rings ... is overly simplistic.” *Id.* ¶¶ 34-35. As a result, the Commission suggested that Aureon “abandon[] its methodology” and instead “apply a reasonable methodology” that is cost-causative and to allocate a “proper number of ring-miles ... to the

Ethernet circuits.” *Id.* ¶ 35. The Commission further directed that Aureon provide a better explanation of the differences in its circuit inventories for 2016 and 2018 (*id.* ¶ 23), and expressly noted that it was not taking a position as to the validity or sufficiency of Aureon’s circuit forecasts. *Id.* ¶ 31, n. 91.

B. Problems Persist With Aureon’s New Circuit Inventory

In the *Second Rate Order*, the Commission concluded, after evaluating the various circuit data Aureon had presented, that Aureon had “fail[ed] to adequately explain a significant difference in reported DS-1 circuits between 2016 and 2018.” *Id.* [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] was in a sense “more problematic ... because Aureon provides no explanation for the 2016 to 2018 difference beyond a general assertion that there is no direct relationship between circuit counts and CEA minutes of use.” *Id.* ¶ 31. And, it ordered Aureon to “provide a more satisfactory explanation for the reported DS1 difference.” *Id.*

No such explanation is provided in Aureon’s new tariff filing. Indeed, its new circuit inventory raises additional issues as to the accuracy and reliability of Aureon’s circuit counts. Notwithstanding Aureon’s prior claims as to the accuracy of the circuit inventory it submitted as part of its September 24, 2018 rate filing (*see e.g.*, Aureon Second Rebuttal, at 7-10), [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

36 [REDACTED]

37 [REDACTED]

38 [REDACTED]

39 [REDACTED]

40 [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

period.” *AT&T Phase II Order*, 64 FCC 2d 1, ¶ 111 (1977) (emphasis added). Aureon acknowledged this standard during the prior rate investigation but failed to show that the CEA DS-1 circuits added since 2016 were “used and useful.” And now, Aureon has *again* reported an increase in CEA DS-1 circuits in the face of precipitously declining demand. Aureon’s inability to proffer a rational explanation for this increase, coupled with the decreasing level of CEA traffic on Aureon’s network, raises serious questions as to the prudence of its investment in these circuits. This concern is compounded by Aureon’s apparent belief that the used and useful doctrine is designed to protect the regulated entities’ interests as opposed the interests of the regulated entities’ customers. *See* Aureon Second Rebuttal, at 32 (“the purpose of the ‘used and useful’ standard is to ensure a monopoly utility is fairly compensated for the investment of its private property.”). Ultimately, the Commission’s “used and useful” principles “serve as a protection against inefficiencies and abuse,” and Aureon has failed to show that its increase in CEA DS-1 circuits satisfies this standard. *Sandwich Isles*, 31 FCC Rcd. 12999, ¶ 98 (2016).

Finally, Aureon has not provided the data relating to its Ethernet circuits called for by the *Second Rate Order*. In discussing Aureon’s method of valuing its unregulated Ethernet rings, the Commission specifically noted that Aureon “does not ... appear to provide data associating particular Ethernet circuits with physical rings.” *Second Rate Order*, ¶ 35. That is still the case.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In short, substantial issues remain as to Aureon’s circuit inventory which require that Aureon’s new tariff be suspended so that these issues can be investigated.

C. Aureon Has Still Not Explained The Basis For Its Circuit Forecast

Significant questions also continue to exist regarding Aureon’s circuit forecasts for 2018, 2019 and 2020.⁴¹ In its prior rate submissions, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁴¹ In the *Second Rate Order*, the Commission expressly noted that it was not addressing “the validity or sufficiency of the support for Aureon’s projection.” *Second Rate Order*, ¶ 31, n. 91.

[REDACTED]

[REDACTED]

[REDACTED]

For these additional reasons, Aureon's tariff should be suspended, and the issues relating to its circuit forecast should be designated for investigation.

D. Aureon's Fully Distributed Cost Study Is Still Not Properly Supported.

In its new tariff filing, Aureon has substantially revised the methodology used to allocate C&WF costs between its CEA and Non-CEA Rings. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Indeed, but for Aureon's change in its traffic forecast, this new Facilities Lease Expense would result (without making any adjustment to exclude the additional \$4.4 million in central office switching investment) in a rate for CEA service of approximately \$0.00196/min., which is much more in line with the rates that AT&T has been advocating throughout this prolonged rate proceeding. That said, significant issues still exist with Aureon's new allocation methodology.

First, Aureon has still not explained the source of the Filed Lease Expense that Aureon uses in developing its CEA rate. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Second, Aureon’s allocation of C&WF costs on a ring mile basis still does not accurately reflect the manner in which C&WF costs are incurred. As the Commission noted in the *Second Rate Order*, “outside plant construction costs of the network rings comprise[] the vast majority of the cable and wire facilities costs.” *Second Rate Order*, ¶ 34. [REDACTED]

⁴² See Consolidated Rebuttal of Iowa Network Access Division d/b/a Aureon Network Services, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, at 35-36 (May 17, 2018) (“Aureon First Rebuttal”). Ironically, despite attacking Sprint and AT&T for previously “ignor[ing] the FCC’s affiliate transaction rules,” Aureon in its appeal of the *Second Rate Order* now criticizes the Commission for requiring it to comply with the Commission’s affiliate transaction rules, which it asserts only apply to incumbent local exchange carriers. See Aureon Petition for Review, at 4-5, Case No. 19-1087 (D.C. Cir. Apr. 16, 2019).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Consequently, this issue needs to be further investigated.

Third, questions also remain with respect to Aureon's allocation of COE costs. As Mr. Pitkin pointed out, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Finally, Aureon still has not demonstrated that the COE and C&WF allocation factors developed for use in allocating the COE and C&WF lease expenses are appropriate for use with respect to the COE and C&WF costs included in Aureon's fully distributed cost study. For that to

⁴³ **[[BEGIN CONFIDENTIAL]]** Aureon also has yet to explain the drastic increase in fiber miles since 2010, including whether that expansion was undertaken to support services other than CEA service, and how that increase can be reconciled with the information Aureon provided during the first rate investigation. *See* Pitkin Supp. Decl. ¶¶ 13-18. **[[END CONFIDENTIAL]]**

be true, Aureon would have to show that all network circuits were included in its rate analysis. As discussed above, substantial questions remain as to the accuracy and reliability of Aureon's circuit inventories, [REDACTED]

[REDACTED] *See supra* Section III.B.

In sum, significant issues continue to exist with Aureon's new cost of service rate calculations and its fully distributed cost study that call into question the justness and reasonableness of its revised CEA rate.

IV. AUREON HAS FAILED TO JUSTIFY ITS INCREASE IN CENTRAL OFFICE SWITCHING INVESTMENT

As explained above, in its prior tariff filing, Aureon failed to justify its inclusion of an additional \$4.4 million in central office switching investment in its 2018 revenue requirement. More specifically, Aureon did not show that investment was "used and useful" or in compliance with the Commission's Part 32 accounting rules. Further, Aureon was unable to document the specific basis for the \$4.4 million investment, nor was it able to explain why it was appropriate to include such costs in its 2018 revenue requirement -- especially given that the amounts at issue had not been expended, no new switching equipment had been put into service, and the record strongly suggested that that equipment would not be put into service during the period in which Aureon's rate would be in effect.

In its new tariff filing, Aureon does not present any new data supporting the inclusion of the additional \$4.4 million in central office switching investment. It does not explain the specific basis for the \$4.4 million estimate, nor does it present any documentation showing that it has purchased or even recently sought bids for that switch equipment. Instead, it largely repeats the arguments it presented in the prior rate case and provides a little bit more information regarding

the switch project's schedule. In this connection, it claims, without providing any documentation, that "the process to build out the switch site has begun and is expected to be completed by the end of Q4 2019," which is about three months later than the schedule Aureon presented in December 2018. *Compare* Aureon Justification at 7, with Vaughan Suppl. Decl. ¶¶ 10-11. Notwithstanding that slippage, however, Aureon still insists that the new switch facilities will be fully constructed and operational by March 1, 2020. Aureon Justification, at 7. What it does not state is whether and to what extent its CEA customers' traffic will be processed by this new switching equipment.

Further, it does not address or make any adjustments in its rate calculation to take into account the impact that this switching equipment will have on its other investments or its operating expenses. As Mr. Pitkin pointed out in the prior rate hearing, the introduction of a new switch will require a number of such adjustments. *See* Pitkin Decl. ¶¶ 47-49. Further, Aureon does not address in its new tariff filing the many other issues raised by both AT&T and Mr. Pitkin in their prior submissions. *See* AT&T Opp. at 13-17; AT&T Ex Parte, Ex. 50; Pitkin Supp. Decl. ¶¶ 25-32. As noted above, in the *Second Rate Order*, the Commission specifically stated that it was not deciding "whether the Aureon's cost support justifies Aureon's increase in central office switching investment," and it urged Aureon to provide "complete cost support and explanatory material." *Second Rate Order*, ¶ 13. Aureon's new tariff filing does not provide that information, and for this additional reason, Aureon's tariff should be suspended, and Aureon should be directed to respond to the myriad issues that AT&T has previously identified regarding Aureon's new switch investment.

V. AUREON'S NEW TRAFFIC STUDY IS UNSUBSTANTIATED

In the *First Rate Order*, the Commission established the demand forecast applicable in this rate proceeding. In Transmittal No. 36, and using twelve months of historical demand data from 2017, Aureon projected 2,599,778,963 interstate minutes of use (MOU) on its CEA network for

2018.⁴⁴ AT&T challenged that forecast, but the Commission “accept[ed] Aureon’s demand forecast of 2,599,778,963 MOU ... as reasonable.” *First Rate Order*, ¶ 101. However, because other aspects of Aureon’s tariff submission violated the Commission’s rules, the Commission ordered Aureon to “*correct and refile* its cost support.” *Id.* ¶ 52 (emphasis added). Aureon’s subsequent tariff submission (Transmittal No. 38) used the same demand forecast (2,599,778,963 MOUs from 2017), but because other aspects of its tariff filing were still not in compliance with the Commission’s rules, the Commission ordered Aureon—once again—to correct and re-file its cost support. *See Second Rate Order*, ¶¶ 1, 12-13.

Aureon has failed to comply with the Commission’s directive, and its demand forecast is flawed in multiple other respects. *First*, rather than correct its existing tariff submission as required by the *Second Rate Order*, Aureon has instead filed a new tariff, based on a different demand forecast. *Second*, Aureon fails to justify its exclusion of 2017 traffic data in its regression analysis, despite using its 2017 traffic data as the basis for its forecasts in both Transmittal Nos. 36 and 38 and continuing to use 2017 financial data in its rate calculation. *Third*, Aureon’s use of actual MOUs violates the Commission’s rules, which require a “*projection* of costs for a representative 12 month period.” 47 CFR § 61.38(b)(1)(ii) (emphasis added). Aureon’s use of actual MOU data to backcast its rates for the same period is no “projection” at all. During the course of the first rate proceeding, Aureon also injected its actual MOU data (from January 2018 through June 2018). *See id.* ¶ 108, Table 7 & n.330. The Commission considered that data in evaluating the reasonableness of Aureon’s forecast, but it did not incorporate the data into the applicable demand forecast, nor could it permissibly have done so.

⁴⁴ *See* INS Cost Support, Tab “Sect 2 – Rate Development,” Rows 35-72.

Finally, substantial questions exist regarding Aureon’s regression analysis. As AT&T pointed out in the past rate proceeding, problems existed with Aureon’s regression analysis including the fact that neither AT&T nor the Commission could replicate Aureon’s analysis. *See First Designation Order*, ¶ 30.⁴⁵ Further, a substantial issue exists as to the propriety of using regression analysis to forecast a purported “trend” that is not time driven but is the product of Aureon’s own failure to properly calculate its rates. Additionally, there has been no showing that what Aureon characterizes as a trend will continue into the future, is in any way permanent, or might not reverse itself if Aureon actually files a rate (or is directed to file a rate) that is just and reasonable.

In sum, substantial issues exist as to Aureon’s new forecast that also require investigation and support suspension of Aureon’s tariff.

CONCLUSION

For the reasons stated above, the Commission should reject the Proposed Tariff or, in the alternative, suspend the Proposed Tariff and investigate Aureon’s Proposed Rate.

⁴⁵ Order Designating Issues for Investigation, *In the Matter of Iowa Network Access Division Tariff F.C.C. No. 1*, WC Docket No. 18-60, Transmittal No. 36, ¶ 30 (Apr. 19, 2018) (“*First Designation Order*”).

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Respectfully submitted,

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Dated: May 6, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2019, I caused a copy of the foregoing Petition, as well as all accompanying materials, to be served as indicated below to the following:

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AT&T Exhibit 53

[Update to AT&T Ex. 41]